Good morning Chairmen Ehlers and Boehlert and Members of the Committees. I am pleased to be here this afternoon on behalf of the U.S. Election Assistance Commission (EAC) to discuss the changes in voting that have been effectuated by the Help America Vote Act of 2002 (HAVA) and the role that EAC plays in supporting the states and local governments in implementing HAVA-compliant voting systems.

INTRODUCTION

EAC is a bipartisan commission consisting of four members: Paul DeGregorio, chairman; Ray Martinez III, vice chairman; Donetta Davidson; and Gracia Hillman. EAC's mission is to guide, assist, and direct the effective administration of Federal elections through funding, innovation, guidance, information and regulation. In doing so, EAC has focused on fulfilling its obligations under HAVA and the National Voter Registration Act (NVRA). EAC has employed four strategic objectives to meet these statutory requirements: Distribution and Management of HAVA Funds, Aiding in the Improvement of Voting Systems, National Clearinghouse of Election Information, and Guidance and Information to the States. Each program will be discussed more fully below. The topic at hand involves our strategic efforts to aid in the improvement of voting systems.

AIDING IN THE IMPROVEMENT OF VOTING SYSTEMS

One of the most enduring effects of HAVA will be the change in voting systems used throughout the country. All major HAVA funding programs can be used by states to replace outdated voting equipment. HAVA established minimum requirements for voting systems used in Federal elections. Each voting system must:

- Permit the voter to verify the selections made prior to casting the ballot;
- Permit the voter to change a selection prior to casting the ballot;
- Notify the voter when an overvote occurs (making more than the permissible number of selections in a single contest);
- Notify the voter of the ramifications of an overvote;
- Produce a permanent paper record that can be used in a recount or audit of an election;
- Provide accessibility to voters with disabilities;
- Provide foreign language accessibility in jurisdictions covered by Section 203 of the Voting Rights Act; and
- Meet the error rate standard established in the 2002 Voting System Standards.

According to HAVA, the requirement for access for voters with disabilities can be satisfied by having one accessible voting machine in each polling place. In addition to these requirements, Congress provided an incentive for states that were using punch card or lever voting systems by providing additional funding on a per precinct basis to replace those outdated systems with a voting system that complies with the requirements set out above.

HAVA also provides for the development and maintenance of testable standards against which voting systems can be evaluated. It further requires Federal certification according to these standards. EAC is responsible for and committed to improving voting systems through these vital programs.

Voluntary Voting System Guidelines

One of EAC's most important mandates is the testing, certification, decertification and recertification of voting system hardware and software. Fundamental to implementing this key function is the development of updated voting system guidelines, which prescribe the technical requirements for voting system performance and identify testing protocols to determine how well systems meet these requirements. EAC along with its Federal advisory committee, the Technical Guidelines Development Committee (TGDC), and the National Institute of Standards and Technology (NIST), work together to research and develop voluntary testing standards.

On December 13, 2005, EAC adopted the first iteration of the Voluntary Voting System Guidelines (VVSG). The final adoption of the VVSG capped off nine months of diligent work by NIST and the TGDC. In May of 2005, the TGDC delivered its draft of the VVSG. EAC then engaged in a comprehensive comment gathering process, which included comments from the general public as well as from members of its Board of Advisors and Standards Board. Interested persons were able to submit comments on-line through an interactive web-based program, via mail or fax, and at three public hearings (New York, NY; Pasedena, CA; Denver, CO). EAC received more than 6,000 individual comments. EAC teamed up with NIST to assess and consider every one of the comments, many of which were incorporated into the final version.

The VVSG is an initial update to the 2002 Voting System Standards focusing primarily on improving the standards for accessibility, usability and security. The 2005 VVSG significantly enhances the measures that must be taken to make voting systems accessible to persons with disabilities and more usable for all voters. For example, the 2002 VSS contained 29 accessibility requirements, focusing primarily on accommodating persons with visual disabilities. The 2005 VVSG contains 120 requirements that establish testing measures to assure that voting systems accommodate all persons with disabilities, including physical and manual dexterity disabilities. In addition to ensuring accessibility requirements were increased and strengthened, the 2005 VVSG includes for the first time a usability section, which addresses the needs of all voters, empowering them to adjust voting systems to improve interaction. Those testing measures include allowing adjustment of brightness, contrast, and volume by the voter to suit his/her needs.

The 2005 VVSG also incorporated standards for reviewing voting systems equipped with voter verifiable paper audit trails (VVPAT)[1] in recognition of the many states that now require this technology. In accordance with HAVA and to assure that persons with disabilities had the same access to review their ballots as non-disabled voters, the 2005 VVSG required VVPATs to be accessible when the paper record would be used as the official ballot or as definitive evidence in a recount. In addition, the VVSG addressed new technologies that emerged on the market since the 2002 VSS, such as wireless technology. Standards were established to require the wireless mechanism to be disabled during voting and to provide a clear, visual indicator showing when the wireless capability is activated. VVSG also establishes testing methods for assessing whether a voting system meets the guidelines. A complete listing of the changes and enhancements included in the 2005 VVSG can be found on the EAC website, http://www.eac.gov/Summary%20of%20Changes%20to%20VVSG.pdf.

The 2005 VVSG, like the 1990 and 2002 VSS, is a voluntary set of voting system testing standards. States choose to make these standards mandatory for equipment purchased in those states by requiring national certification according to those standards in their statutes and/or rules and regulations. Currently, approximately 40 states require certification to either the 2005 VVSG or the 1990 or 2002 VSS. When EAC adopted the 2005 VVSG, it did so with an effective date of December 13, 2007. This two-year period was designed to allow states the time needed to make changes to their laws, rules and regulations to require certification to the new standards, as is standard practice when introducing new industry guidelines. New York has already legislatively mandated certification to the 2005 VVSG, and EAC expects over the next several years that the vast majority of the states will make changes to their legislation requiring certification to the 2005 VVSG. Prior to December 13, 2007, voting systems, components, upgrades and modifications can be tested against either the 2002 VSS or the 2005 VVSG, depending on the requirements of the states and manufacturers' requests. After December 13, 2007, EAC will no longer test systems to the 2002 VSS; systems and upgrades will only be tested to the 2005 VVSG.

Significant work remains to be done to fully develop a comprehensive set of standards and testing methods for assessing voting systems and to ensure that they keep pace with technological advances. In FY 2007, EAC along with TGDC and NIST, will revise sections of the VVSG dealing with software, functional requirements, independent verification, and security and will develop a comprehensive set of test suites or methods that can be used by testing laboratories to review any piece of voting equipment on the market. Much like the roll out of the 2005 VVSG, these future iterations will be adopted with an effective date provision and a procedure for when new voting systems, components, upgrades and modifications will be required to be tested against the new iteration of the VVSG.

[1] VVPAT is an independent verification method that allows the voter to review his/her selections prior to casting his/her ballot through the use of a paper print out. VVPAT is merely one form of independent verification. EAC is currently working with NIST to develop standards for additional methods such as witness systems, cryptographic systems, and split process systems.

Accreditation of Voting System Testing Laboratories

HAVA Section 231 requires EAC and NIST to develop a national program for accrediting voting system testing laboratories. NIST's National Voluntary Laboratory Accreditation Program (NVLAP) will initially screen and evaluate testing laboratories and will perform periodic reevaluation to verify that the labs continue to meet the accreditation criteria. When NVLAP has determined that a lab is competent to test systems, the NIST director will recommend to EAC that a lab be accredited. EAC will then make the determination to accredit the lab. EAC will issue an accreditation certificate to the approved labs, maintain a register of accredited labs and post this information on its website to fully inform the public about this important process.

In June 2005, NVLAP advertised for the first class of testing laboratories to be reviewed under the NVLAP program and accredited by EAC. Three applications were received in the initial phase, with two additional applications following in late 2005. Pre-assessments of these laboratories began in April 2006 and formal review is proceeding. NVLAP will conduct full evaluations of at least two initial applicants this fall and, depending on the outcome of the evaluations, will make initial recommendations to the EAC before the end of the year. All qualified candidates from among the pool of five applicants will be sent to the EAC by spring 2007.

In late 2005, EAC invited laboratories that were accredited through the National Association of State Election Directors (NASED) program as Independent Testing Authorities (ITAs) to apply for interim accreditation to avoid a disruption or delay in the testing process. All three ITAs have applied for interim accreditation. Interim accreditation reviews by EAC contractors are under way and are expected to be completed by September 2006. ITAs will be accredited on an interim basis until the first class of laboratories is accredited through the NVLAP process. After that time, all testing labs must be accredited through the NVLAP evaluation process.

The National Voting System Certification Program

In 2006, EAC is assuming the duty as prescribed by HAVA to certify voting systems according to national testing standards. Previously, NASED qualified voting systems to both the 1990 and 2002 Voting System Standards. Historically, voting system qualification has been a labor intensive process to ensure the integrity and reliability of voting system hardware, software and related components. In six months, NASED received 38 separate voting system test reports for review and qualification. All requests were received, processed and monitored while the testing laboratory assessed compliance. Once a test report was produced, technical reviewers analyzed the reports prior to certification.

EAC's certification process will constitute the Federal government's first efforts to standardize the voting system industry. EAC's program will encompass an expanded review of voting systems, and it will utilize testing laboratories accredited by EAC and experts hired by EAC to assure that the tested systems adequately met the standards.

The EAC will implement the Testing and Certification Program required by Section 231(a)(1) of HAVA in two distinct phases (pre-election phase and full program). Both phases will be rolled out in 2006. The first phase of the program will begin on July 24, 2006 and terminate upon the EAC's implementation of the program's second phase. The second phase (full program) will begin on December 7, 2006.

The pre-election phase of the program focuses on providing manufacturers a means to obtain Federal certification for modifications required by state and local election officials administering the 2006 General Election. This pre-election phase will ensure a smooth and seamless transition from the NASED program (which has qualified voting systems at the national level for more than a decade) to the more rigorous and detailed EAC program. This will be done by delaying implementation of some the procedural requirements found in the full program until after the critical pre-election period. This will allow the EAC to diligently review voting system modifications while, at the same time, ensuring a smooth transition and avoiding the unacceptable delays often associated with rolling out a new program.

The full program will begin in December by requiring every voting system manufacturer that desires to have a product certified to register and disclose information about the company and its owners, board members and decision makers. Manufacturers will be subject to a conflict of interest analysis including reviewing whether any owners or board members are barred from doing business in the United States. EAC will test complete voting systems including new components and how they integrate with the entire voting system. This process will be achieved by having technical experts review the reports provided by accredited testing laboratories to assure that the tests performed and the results are consistent with a system that conforms to the VVSG. These experts will recommend conforming systems for certification. Another new feature of the EAC certification program will be the quality assurance program. Through site visits to manufacturing facilities and field inspections, EAC will confirm that the systems that are being manufactured, sold to and used by election jurisdictions throughout the country are the same as those certified by EAC. Last, EAC will introduce a decertification process that will allow involved persons to file complaints of non-conformance, provide for the investigation of those complaints, and if warranted decertify systems because of a failure to conform to the VVSG.

Election Management Guidelines

To complement the VVSG, the EAC is creating a set of election management guidelines. These guidelines are being developed by a group of experienced state and local election officials who provide subject matter expertise. The project will focus on developing procedures related to the use of voting equipment and procedures for all other aspects of the election administration process. The election management guidelines will be available to all election officials if they wish to incorporate these procedures at the state and local levels. These guidelines cover the following topics:

- Storage of equipment
- Equipment set up
- Acceptance testing
- Procurement
- Use
- Logic and accuracy (validation) testing
- Tabulation
- Security protocols (all phases—storage, set up, transport and Election Day)
- Training of employees/poll workers
- Education for voters

The first of these management guidelines was issued by EAC in June 2006 in the form of a Quick Start Guide for election officials. This guide focused on the issues and challenges faced by election officials as they accept and implement new voting systems. The guide gave tips to the election officials on how to avoid common pitfalls associated with bringing new voting systems on line.

2006: A YEAR OF CHANGE, CHALLENGE AND PROGRESS

The Federal elections in 2006 have and will mark a significant change in the administration of elections. In compliance with HAVA, states have purchased and implemented new voting systems. There is a strong shift to electronic voting, although optical scan voting is still popular. In addition, states have imposed new requirements on their voting systems, and they have implemented their own testing programs for voting systems they purchase. And, in at least 25 states, voter verified paper audit trails (VVPAT) have been required for all electronic voting. Due to the introduction of new voting systems throughout the nation, the voter's experience at the polls will be quite different in 2006 than it was in 2000. It is estimated that one in three voters will use different voting equipment to cast their ballots in 2006 than in 2004.

Voters with disabilities will likely experience the most dramatic changes. For the first time, every polling place must be equipped with voting machines that allow them to vote privately and independently. For many voters with disabilities, this may be the first time that they will cast ballots without the assistance of another person.

Voting systems do not represent the only changes in election administration that will be apparent in 2006. States have also developed statewide voter registration lists, which will provide the ability to verify voters' identity by comparing information with other state and Federal databases. This will result in cleaner voter registration lists and fewer opportunities for fraud. Another anticipated benefit of the statewide lists will be a significantly reduced need for provisional ballots, as was the case in states that had statewide voter registration lists in 2004.

This year is one of transition, which is difficult to overcome in any business; elections are no different. The introduction of new equipment will present some challenges and hurdles to overcome. For state and local governments, there are also a host of new obligations. They must receive and test a fleet of new voting equipment. Training for staff and poll workers must be organized and conducted. And, extensive education programs must be implemented to inform the public about the new voting equipment.

Although EAC cannot be on the ground in every jurisdiction to lend a hand in these tasks, we have issued a Quick Start Guide to assist election officials as they implement new voting systems. We also encourage states to take proactive measures to test their voting systems and voter registration lists prior to the Federal elections. Such activities have proven to be an excellent tool to identify problems and solutions prior to the stresses and unpredictability of a live election.

CONCLUSION

Over the past four years, significant changes have been made to our election administration system. New voting systems have been purchased and implemented. Each state has adopted a single list of registered voters to better identify those persons who are eligible to vote. Provisional voting has been applied across all 50 states, the District of Columbia and four territories. However, one thing has not changed. Elections are a human function. There are people involved at every level of the election process, from creating the ballots, to training the poll workers, to casting the votes.

With these changes will come unexpected situations, even mistakes. We cannot anticipate in a process that involves so many people that it will work flawlessly the first time. What we can embrace, however, is that the process has been irrevocably changed for the better. There is a heightened awareness of the electoral process in the general public. There have been significant improvements to the election administration process. And, more people have the ability to vote now than ever before.

Messrs. Chairmen, thank you for the opportunity to address the Committees today. I will be happy to answer any questions that you may have.